

No. 15876

United States
Court of Appeals
for the Ninth Circuit

UNION OIL COMPANY OF CALIFORNIA, a
Corporation,

Appellant.

vs.

FRANCISCO L. PEDRASAZ,

Appellee.

Transcript of Record
(In Three Volumes)

FILED

MAY - 2 1958

Volume I
(Pages 1 to 29)

PAUL P. O'BRIEN, CLERK

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

No. 15876

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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MICHELSON, WHELAN AND MICHELSON,
1650 Russ Bldg.,
San Francisco 4, California,

Proctors for Libelant & Appellee.

FREDERIC G. NAVÉ,
BOYD & TAYLOR,
350 Sansome St.,
San Francisco, California,

Proctors for Respondent & Appellant.

In the District Court of the United States in and
for the Southern Division of the Northern Dis-
trict of California

In Admiralty No. 27119

FRANCISCO L. PEDRASAZ,

Libelant,

vs.

UNION OIL COMPANY OF CALIFORNIA, a
Corporation; FRANCES E. CARDINALE,
Administratrix of the Estate of FRANK JO-
SEPH CARDINALE, Also Known as FRANK
J. CARDINALE, Deceased; IDALINE JEN-
NER CARDINALE; BLACK COMPANY, a
Corporation; WHITE COMPANY, a Cor-
poration; JOHN DOE; RICHARD ROE and
PETER ROE,

Respondents.

LIBEL

(Damages for Personal Injuries—\$100,000.00)

To the Honorable Judges of the Above-Entitled
Court:

The libel of Francisco L. Pedrasaz, in a case of
libel, civil and maritime, for damages for personal
injuries, alleges as follows:

I.

That the respondent Union Oil Company of Cali-
fornia is now and was at all times herein mentioned
a corporation duly organized and existing under

and by virtue of the laws of the State of California and authorized to do and doing business in the City and County of San Francisco, State and Northern District of California.

II.

That the respondents, Black Company, a corporation, and White Company, a corporation, are now and were at all times mentioned herein corporations duly organized and existing under and by virtue of the laws of one of the States of the United States and were at all of said times authorized to do and doing business in said City and County of San Francisco, State and Northern District of California.

III.

That the true names of respondents, Black Company, a corporation; White Company, a corporation; John Doe; Richard Roe; and Peter Roe, are unknown to libelant and for that reason said respondents are sued herein under fictitious names. Libelant prays that when the true names of said respondents are ascertained they be substituted herein in the place and stead of said fictitious names.

IV.

That on or about the 28th day of September, 1954, Frank Joseph Cardinale, also known as Frank J. Cardinale, died; that thereafter to wit, on the 12th day of November, 1954, after proceedings duly had for such purpose, Respondent Frances E. Cardinale was duly appointed administratrix of the estate of Frank Joseph Cardinale, also known as

Frank J. Cardinale, Deceased, by the Superior Court of the State of California, in and for the County of Monterey and on said 12th day of November, 1954, qualified as such administratrix and entered upon the administration of said estate and ever since such time has been and now is the duly appointed, qualified and acting administratrix of the estate of said deceased. That said Frank Joseph Cardinale, also known as Frank J. Cardinale, Deceased, will hereinafter be referred to as "Decedent."

V.

That at all times on or about the 28th day of September, 1954, and at the time libelant was injured as hereinafter alleged, and for a long time prior thereto, said Decedent and Respondent Idaline Jenner Cardinale owned, operated, managed, controlled, navigated and maintained the fishing vessel Santa Lucia, which vessel was at all of said times a vessel of the American Merchant Marine, employed as a commercial fishing vessel.

VI.

That at all times on or about the 28th day of September, 1954, and at the time libelant was injured as hereinafter alleged, libelant was employed by said Decedent and Respondent Idaline Jenner Cardinale, to work as a seaman, to wit, as a fisherman on board, and as a member of the crew of said vessel, Santa Lucia, and was working on board said vessel in the course and scope of his said employ-

ment; that during all of said times said vessel was afloat on navigable waters.

VII.

That on or about the 28th day of September, 1954, and at the time libelant was injured as hereinafter alleged and for a long time prior thereto, Respondent Union Oil Company of California, a corporation, owned, maintained, managed, operated and controlled, on piers and land at Avila, California, a commercial marine service and fueling station, gasoline, oil and other petroleum products, tanks and other facilities for the storage of said gasoline, oil and other petroleum products, and equipment for use in connection with said commercial marine service and fueling station, gasoline, oil, other petroleum products, tanks and other facilities.

VIII.

That on or about the 28th day of September, 1954, and at the time libelant was injured as hereinafter alleged, and while said vessel was moored at one of said piers in connection with the fueling of said vessel by Respondent Union Oil Company of California, a corporation, and said commercial marine service and fueling station, said Decedent and Respondents herein, except respondent administratrix, negligently caused and permitted an explosion and fire to occur in, on, around and about said vessel, whereby libelant was made weak, sick, sore, lame, stiff and disabled and caused to suffer a fracture of his right wrist and arm, a fracture of the

right tibia, burns of the right wrist and arm, contusions, bruises, strains and sprains of his right hand, wrist, shoulder, right leg, ankle and foot and other parts of his body and great nervous shock; that because of said injuries libelant ever since receiving the same, has been and always will be weak, sick, sore, lame, stiff, disabled and deformed; that the aforesaid negligence of Decedent and respondents herein, except respondent administratrix, directly and proximately caused libelant to be injured as aforesaid and Decedent and respondents herein, except respondent administratrix, did negligently cause and permit libelant to be so injured.

IX.

That because of said injuries, libelant has suffered ever since receiving the same and always will suffer great physical and mental pain and anguish.

X.

That immediately prior to being injured as aforesaid, libelant was in good physical and mental condition and earning or capable of earning at his occupation of seaman approximately \$350.00 per month, together with his board and lodging of the reasonable value of \$240.00 per month, but because of said injuries, libelant has been unable to work or earn any money since the said 28th day of September, 1954, will be unable to work or earn money for a long period of time to come, and thereafter will only be able to work and earn money at great financial loss.

XI.

That because of said injuries and the aforesaid negligence of Decedent and respondents herein, except respondent administratrix, libelant necessarily incurred reasonable hospital and other medical bills in a reasonable sum presently unknown to libelant and libelant in the future will necessarily incur further and additional reasonable expenses for hospital and other medical expenses in an amount not as yet known to libelant, and as to which libelant prays leave to amend this libel and produce proof thereof at the time of trial.

XII.

That by reason of the premises, libelant has been damaged in the sum of \$100,000.00, which amount libelant asks be awarded to him by this Court.

XIII.

That libelant's aforesaid claim in respect to damages for personal injuries was heretofore and within the time prescribed for the filing of creditor's claims by the provisions of the Probate Code of California and the Notice to Creditors published by Respondent Frances E. Cardinale, Administratrix of the Estate of Frank Joseph Cardinale, also known as Frank J. Cardinale, Deceased, duly and regularly presented to the said estate as directed in said Notice to Creditors, and said claim has been rejected and disallowed.

XIV.

That all and singular the premises are true and

within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libelant prays that process, according to the courses of this Honorable Court in causes of admiralty and maritime jurisdiction may issue against the respondents and each of them and that respondents and each of them may be cited to appear and answer, all and singular, the matters aforesaid and that this Honorable Court would be pleased to decree to the libelant the sum asked for by the libelant in the aforesaid libel and for costs and for such other and further relief as in law and justice libelant is entitled to receive.

/s/ RUSSELL ZACHES,

/s/ SAMUEL VARTAN,

MICHELSON, WHELAN &
MICHELSON,

Proctors for Libelant.

United States of America,
State and Northern District of California,
City and County of San Francisco—ss.

Francisco L. Pedrasaz, being first duly sworn, deposes and says:

That he is the libelant named in the above-entitled cause; that he has read the within and foregoing libel and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on information and

belief, and as to those matters that he believes it to be true.

/s/ FRANCISCO L. PEDRASAZ.

Subscribed and sworn to before me this 2nd day of May, 1955.

[Seal] /s/ ALICE C. MORSE,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed May 3, 1955.

[Title of District Court and Cause.]

No. 27119

ANSWER TO LIBEL

Comes Now the Respondent, Union Oil Company of California, a corporation, and answering Libellant's Libel on file herein admits, denies and alleges as follows:

I.

Answering Paragraphs IV, VI, VII, IX, X and XIII, said respondent alleges that it has no information or belief upon the subject sufficient to enable it to answer the allegations therein contained and placing its denial on that ground denies each and every, all and singular, the allegations therein contained and each and every part thereof.

II.

Answering Paragraphs VIII and XI, denies each and every, all and singular, the allegations therein

contained and each and every part thereof insofar as the same names, mentions or concerns this answering respondent.

III.

Answering Paragraphs XII and XIV, denies each and every, all and singular, the allegations therein contained and each and every part thereof.

Denies that Libelant, Francisco L. Pedrasaz has been damaged in the sum of \$100,000.00 or any other sum or sums whatsoever or at all.

Further answering said Libel, and as and for a separate and distinct defense thereto and plea of contributory negligence, said respondent alleges that Libelant, Francisco L. Pedrasaz, was negligent and careless in and about the matters set forth in said Libel in the following manner, to wit: that at the said time and place Libelant, Francisco L. Pedrasaz, failed to use due or any care or caution for the protection of his own safety; that said acts of carelessness and negligence on his part proximately caused or contributed to the damage sustained or injury sustained.

Wherefore, said respondent prays that Libelant take nothing by his action and that said respondent be hence dismissed with its costs herein incurred.

BOYD & TAYLOR,

/s/ FREDERIC G. NAVE,
Proctors for Respondent, Union Oil Company of California, a Corporation.

State of California,
City and County of San Francisco—ss.

Frederic G. Nave, being first duly sworn, deposes and says: That he is one of the proctors for respondent herein; that he has read the foregoing Answer to Libel and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes them to be true.

/s/ FREDERIC G. NAVE.

Subscribed and sworn to before me this 13th day of June, 1955.

[Seal] /s/ VIRGINIA RUTH HOLLOWAY,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission expires Aug. 11, 1956.

[Endorsed]: Filed June 13, 1955.

Affidavit of Service by Mail attached.

[Title of District Court and Cause.]

No. 27119

ANSWER TO LIBEL IN PERSONAM
To the Honorable Judges of the Above-Entitled
Court:

Frances E. Cardinale, administratrix of the
Estate of Frank Joseph Cardinale, also known as

Frank J. Cardinale, deceased, and Idaline Jenner Cardinale answer the Libel filed herein, admitting, denying and alleging as follows:

I.

Answering Paragraphs II, III, VII, IX, X and XI of libelant's Libel, respondents allege that they have no information or belief sufficient to enable them to answer the allegations therein contained, and, placing their denial on that ground, deny each and every, all and singular, the allegations therein contained.

II.

Answering Paragraphs V, VI, VII and XII of said Libel, respondents deny each and every, all and singular, the allegations therein contained.

Deny that libelant Francisco L. Pedrasaz has been damaged in the sum of \$100,000.00, or any other sum or sums whatever, or at all.

Wherefore, respondents Frances E. Cardinale and Idaline Jenner Cardinale pray that libelant take nothing by his action and that said respondents be dismissed with their costs herein incurred.

/s/ MORTON L. SILVERS,

MORGAN & BEAUZAY,

Proctors for Respondents Frances E. Cardinale and
Idaline Jenner Cardinale.

State of California,
City and County of San Francisco—ss.

Frances E. Cardinale, being first duly sworn, deposes and says:

That she is one of the respondents in the above action; that she has read the foregoing Answer to Libel in Personam, and knows the contents thereof; that the same is true of her own knowledge, except as to the matters which are therein stated on her information or belief and as to those matters that she believes it to be true.

/s/ FRANCES E. CARDINALE.

Subscribed and sworn to before me this 1st day of October, 1955.

[Seal] /s/ PAULA G. SMITH,
Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires November 18, 1958.

State of California,
City and County of San Francisco—ss.

Idaline Jenner Cardinale, being first duly sworn, deposes and says:

That she is one of the respondents in the above action; that she has read the foregoing Answer to Libel in Personam, and knows the contents thereof; that the same is true of her own knowledge, except

as to the matters which are therein stated on her information or belief and as to those matters that she believes it to be true.

/s/ IDALINE JENNER CARDINALE.

Subscribed and sworn to before me this 1st day of October, 1955.

[Seal] /s/ PAULA G. SMITH,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires November 18, 1958.

[Endorsed]: Filed Oct. 4, 1955.

Affidavit of Service by Mail attached.

[Title of District Court and Cause.]

MINUTE ORDER RE CONSOLIDATION
OF CASES
(August 5, 1957)

Present: The Honorable Louis E. Goodman,
District Judge.

- 27116—Salmeri vs. Cardinale.
- 27117—Salmeri vs. Union Oil Co. of Calif.
- 27118—Pedrasaz vs. Cardinale.
- 27119—Pedrasaz vs. Union Oil Co. of Calif.
- 27120—Tarantino vs. Cardinale.
- 27121—Tarantino vs. Union Oil Co. of Calif.

- 27122—Belleci vs. Cardinale.
27123—Belleci vs. Union Oil Co. of Calif.
27124—Belleci vs. Cardinale.
27125—Belleci vs. Union Oil Co. of Calif.
27156—J. Romeo vs. Union Oil Co. of Calif.
27157—S. Romeo vs. Union Oil Co. of Calif.
27158—Cardinale vs. Union Oil Co. of Calif.
27159—Adagio vs. Union Oil Co. of Calif.

The above-entitled cases came on regularly this day to be set for trial. On motion of John Whelan, Esq., Ordered all of these cases and case No. 27364 —Cardinale vs. Union Oil Company, be consolidated and trial set for August 26, 1957.

**FINDINGS OF FACTS, CONCLUSIONS OF
LAW AND DECISION OF THE COURT**

(Reporter's Transcript—Sept. 12, 1957)

[See Volume I, Pages 17 to 43, Case No. 15875,
Joseph Salmeri vs. Union Oil Co., etc.]

In the District Court of the United States, and
for the Southern Division of the Northern Dis-
trict of California

In Admiralty No. 27118 and No. 27119
(Consolidated)

FRANCISCO L. PEDRASAZ,

Libelant,

vs.

FRANCES E. CARDINALE, Administratrix of
the Estate of FRANK JOSEPH CARDINALE,
Also Known as FRANK J. CARDINALE, De-
ceased, IDALINE JENNER CARDINALE,
et al.,

Respondents.

FRANSICO L. PEDRASAZ,

Libelant,

vs.

UNION OIL COMPANY OF CALIFORNIA, a
Corporation, FRANCES E. CARDINALE, Ad-
ministratrix of the Estate of FRANK JOSEPH
CARDINALE, Also Known as FRANK J.
CARDNIALE, Deceased, IDALINE JENNER
CARDINALE, et al.,

Respondents.

FINAL DECREE

The above-entitled cases having come on regularly
to be heard on the 3rd, 4th, 5th, 6th, 9th, 10th, 11th
and 12th days of September, 1957, and the court
having considered the evidence, both oral and docu-
mentary, and the arguments of counsel and the cause
having been submitted and the court having made

It Is Ordered, Adjudged and Decreed that libelant, Francisco L. Pedrasaz, recover of and from the respondents, Frances E. Cardinale, Administratrix of the Estate of Frank Joseph Cardinale, also known as Frank J. Cardinale, Deceased, and Idaline Jenner Cardinale, and Union Oil Company of California, a corporation, jointly and severally, the total sum of \$14,167.37.

It Is Further Ordered, Adjudged and Decreed that libelant, Francisco L. Pedrasaz, recover of and from the respondents, Frances E. Cardinale, Administratrix of the Estate of Frank Joseph Cardinale, also known as Frank J. Cardinale, Deceased, and Idaline Jenner Cardinale, and Union Oil Company of California, a corporation, jointly and severally, his costs involved herein.

Dated: October 4th, 1957.
and entered its Findings of Fact and Conclusions
of Law, Now, Therefore,

/s/ SYLVESTER J. RYAN,
United States District Judge.

Approved as to Form and receipt of copy of the
above and foregoing Final Decree is hereby acknowl-
edged this 27th day of September, 1957.

BOYD & TAYLOR,
By /s/ FREDERIC G. NAVÉ,
/s/ MORTON L. SILVERS,
/s/ MORGAN & BEAUZAY,
Proctors for Respondents.

[Endorsed]: Filed Oct. 10, 1957.

[Title of District Court and Cause.]

No. 27119

NOTICE OF APPEAL

Notice Is Hereby Given that Union Oil Company of California, a corporation, respondent above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on October 11, 1957.

Dated: November 6th, 1957.

FREDERIC G. NAVÉ,
BOYD & TAYLOR,

By /s/ FREDERIC G. NAVÉ,
Attorneys for Appellant, Union Oil Company of
California, a Corporation.

[Endorsed]: Filed Nov. 7, 1957.

[Title of District Court and Cause.]

No. 27119

**STIPULATION EXTENDING TIME TO FILE
RECORD AND DOCKET APPEAL**

It Is Hereby Stipulated and Agreed, by and between the attorneys for the parties hereto, subject to the order of the court, that the time within which

respondent-appellant shall file the record on appeal and docket the appeal from judgment entered herein on October 11, 1957, in the United States Court of Appeals for the Ninth Circuit be extended to and including January 13, 1958.

Dated: December 12, 1957.

/s/ RUSSELL ZACHES,

/s/ SAMUEL VARTAN,

MICHELSON, WHELAN &
MICHELSON,

Attorneys for Libelant Francisco Pedrasaz.

FREDERIC G. NAVE,
BOYD & TAYLOR,

/s/ FREDERIC G. NAVE,

Attorneys for Respondent-Appellant Union Oil Company of California, a Corporation.

So Ordered: December 12, 1957.

/s/ GEO. B. HARRIS,

United States District Judge.

[Endorsed]: Filed Dec. 16, 1957.

[Title of District Court and Cause.]

No. 27119

AFFIDAVIT OF FREDERIC G. NAVÉ

State of California,

City and County of San Francisco—ss.

Frederic G. Nave, being first duly sworn, deposes and says:

That he is an attorney and proctor of law duly licensed and admitted in the above-entitled court and is the proctor attorney for the appellant, Union Oil Company of California, a corporation, and makes this Affidavit for and on behalf of said appellant, Union Oil Company of California, a corporation; that heretofore on December 12, 1957, pursuant to stipulation and order of this court the time within which the Appellant, Union Oil Company of California, a corporation, should file its record on appeal and docket the appeal from the judgment entered herein on October 11, 1957, in the United States Court of Appeals for the Ninth Circuit was extended to and including January 13, 1958; that affiant has consulted with the reporters who are preparing the record and transcripts and has been advised that due to the press of work that the record and transcript is not yet completed and have requested an extension of time of thirty (30) days for such purposes; that affiant did communicate with attorney, John Whelan, of the law firm of Michelson, Whelan & Michelson, of San Fran-

cisco, who are the proctors and attorneys for the Libelant, Appellee, and did request the written stipulation consenting to such extension and was advised that while they would not grant a stipulation in writing that they had no objection to a court order granting such extension being entered.

/s/ FREDERIC G. NAVE.

Subscribed and sworn to before me this 13th day of January, 1958.

[Seal] /s/ VIRGINIA A. HAMILTON,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires May 2, 1960.

[Endorsed]: Filed Jan. 13, 1958.

[Title of District Court and Cause.]

No. 27119

ORDER EXTENDING TIME

Upon reading the Affidavit of Frederic G. Nave, Proctor for Respondent and Appellant, Union Oil Company of California, a corporation, and for good cause appearing;

It Is Hereby Ordered that the time within which the Respondent, Appellant, Union Oil Company of California, a corporation, shall file the record or appeal and docket the appeal from the judgment

entered herein on October 11, 1957, in the United States Court of Appeals for the Ninth Circuit be extended to and including February 12, 1958.

Dated: January 13, 1958.

/s/ O. D. HAMLIN,
United States District Judge.

[Endorsed]: Filed Jan. 13, 1958.

[Title of District Court and Cause.]

Nos. 27118 and 27119

CERTIFICATE OF CLERK TO RECORD
ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein:

Libel (Damages for Personal Injuries — \$100,000.000).

Answer to Libel.

Libel in Personam.

Deposition of Francisco L. Pedrasaz.

Minute Order dated August 5, 1957, consolidating cases for trial.

Final Decree.

Notice of Appeal.

Designation of Contents of Record on Appeal.

Stipulation Extending Time to File Record and Docket Appeal.

Affidavit of Frederic G. Nave.

Order Extending Time.

Libelant's Exhibits 1 to 12, inclusive.

Respondents' Exhibits A to W, inclusive.

(Exhibits placed in file 27117).

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 16th day of January, A.D. 1958.

C. W. CALBREATH,
Clerk,

By /s/ WM. J. FLINN ,
Deputy Clerk.

[Endorsed]: No. 15876. United States Court of Appeals for the Ninth Circuit. Union Oil Company of California, a Corporation, Appellant, vs. Francisco L. Pedrasaz, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed: January 16, 1958.

Docketed: February 5, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15876

FRANCISCO L. PEDRASAZ,

Libelant and Appellee,

vs.

UNION OIL COMPANY OF CALIFORNIA, a
Corporation, et al.,

Respondents and Appellants.

DESIGNATION OF THE CONTENTS
OF RECORD ON APPEAL

Appellant, Union Oil Company of California, a corporation, designates the entire record pursuant to Rule 17 (6) of the United States Court of Appeals for the Ninth Circuit, including the Reporter's Transcript and all exhibits.

Dated: February 6, 1958.

FREDERIC G. NAVE,
BOYD & TAYLOR;

By /s/ FREDERIC G. NAVE,
Proctors for Appellant, Union Oil Company of
California, a Corporation.

[Endorsed]: Filed Feb. 5, 1958.

[Title of Court of Appeals and Cause.]

No. 15876

**APPELLANT'S STATEMENT
OF POINTS ON APPEAL**

Appellant, Union Oil Company of California, a corporation, hereby submits its concise statement of points upon which appellant intends to rely in this appeal as follows:

1. The Court erred in finding that the injuries sustained by the libelant were caused or occasioned by negligence of appellant proximately causing or contributing to the explosion of the F/V Santa Lucia.
2. The Court erred in finding that the injuries sustained by the libelant occurred because of fault or negligence on the part of this respondent.
3. The Court erred in not finding that the sole cause of the injuries to the libelant was due to the unseaworthiness of the F/V Santa Lucia and to the personal and active negligence of Frank J. Cardinale, one of the co-owners of the F/V Santa Lucia.
4. The Court erred in finding that Charles Caldwell, the marine service station employee of appellant, was guilty of negligence contributing to the explosion and fire aboard the F/V Santa Lucia.
5. The Court erred in finding that respondent was guilty of negligence as a joint tort feasor in this action.

6. The Court erred in finding that the appellant, Union Oil Company of California, was at fault and to blame for the injuries received by the libelant.

7. The Court erred in finding that the respondent, Union Oil Company of California, was jointly at fault and to blame with the co-owners, Frances E. Cardinale, administratrix of the estate of Frank J. Cardinale, and Idaline Jenner Cardinale, the co-owners of the F/V Santa Lucia.

8. The Court erred in failing to find, as a conclusion of law, that the appellant, Union Oil Company of California, was not negligent in any manner contributing to the explosion and fire of the F/V Santa Lucia and resulting injuries to libelant.

9. The Court erred in making findings of fact that Charles Caldwell, an employee of respondent, Union Oil Company of California, was negligent and at fault when he failed to look at the gasoline meter until 58½ gallons had been delivered to the F/V Santa Lucia.

10. The Court erred in its findings of fact that the failure of the said Charles Caldwell, an employee of the Union Oil Company of California, to look at the gasoline meter until 58½ gallons had been delivered, was negligence contributing to or causing the explosion and fire aboard the F/V Santa Lucia and resulting injuries to libelant.

11. The Court erred in making and entering the findings of fact that the respondent, Union Oil

Company of California, was negligent and at fault in not exercising reasonable care or prudence and that its failure so to do was a proximate cause of the explosion, and fire on the F/V Santa Lucia and the resulting injuries to libelant.

12. The Court erred in that the findings of fact heretofore mentioned are not supported by any evidence in the trial of said action.

13. The Court erred in that there was no evidence to support its findings of negligence against the said Caldwell or this appellant heretofore specifically mentioned.

14. The Court erred in adopting conclusions of law inconsistent with its findings of facts.

15. The Court properly concluded that the explosion aboard the F/V Santa Lucia was due to an unseaworthiness aboard the Santa Lucia and to the personal and active negligence of Frank J. Cardinale, one of the co-owners of the ship, but conclusions of law holding appellant, Union Oil Company of California, to be a joint tort feasor was inconsistent therein.

16. The Court erred in awarding judgment in favor of libelant against this appellant.

17. The Court erred in allowing excessive damages against this appellant.

18. That the amount of damages awarded libelant against this appellant included maintenance and

cure which, under the evidence of this case, should not have been awarded against appellant.

19. That the money judgment awarded appellant was excessive and was not supported by the evidence in this case.

Dated: February 6, 1958.

FREDERIC G. NAVÉ,
BOYD & TAYLOR;

/s/ FREDERIC G. NAVÉ,
Proctors for Appellant, Union
Oil Company of California.

[Endorsed]: Filed Feb. 5, 1958.

